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Address by Justice Robert Nicholson, Judge of the Federal Court of Australia, on the occasion of his installation as Chancellor on Tuesday, 18 February 1997

Robert Nicholson

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EDITH COWAN
UNIVERSITY
PERTH WESTERN AUSTRALIA

Address by

Justice Robert Nicholson

Judge of the Federal Court of Australia

on the occasion of his

Installation

as

Chancellor

on

Tuesday, 18 February 1997

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Address by
Justice ROBERT NICHOLSON
on the occasion of his Installation as

CHANCELLOR

of Edith Cowan University

on

Tuesday, 18 February 1997

**EDITH COWAN UNIVERSITY
LIBRARY**

Your Excellency and Mrs Jeffery,
Distinguished guests acknowledged by the Pro-Chancellor
Ladies and Gentlemen

On Saturday 3 August 1996 I accepted the invitation of Edith Cowan University to become its next Chancellor, effective from 1 January 1997. Three events occurred in reasonably quick succession which made me question the wisdom of that acceptance.

The first was that Pierre Ryckmans delivered the 1996 Boyer Lectures in which he issued the ultimate challenge to the concept of a university. He provoked us all when he stated:

*"The main problem is not so much that the University as Western civilization knew it is now virtually dead, but that its death has hardly registered in the consciousness of the public, and even of a majority of academics themselves."*¹

The second event occurred around mid-August when I received a memorandum from the Vice-Chancellor, Professor Roy Lourens stating that the issue of closer cooperation between universities in Western Australia, including the possibility of amalgamation, was on the agenda.

The third event occurred when around the same time, the Vice-Chancellor announced he would be retiring on the 30th June 1997.

As you can imagine, I began to wonder what I had let myself in for! Fortunately, universities have always meant a great deal to me. Nurtured to this viewpoint by the mother of universities in this State and encouraged in its continuance by my contact with universities interstate and overseas, I have remained unashamedly a university person. I am therefore delighted to have present today Chancellors and/or Vice-Chancellors from each university in Western Australia. Although our institutions are in competition, we ultimately exist to serve together the wider interests of higher education in this State.

Chancellor

So it is that today I come before you installed in the office as Chancellor of Edith Cowan University. There is now no chance of my escaping the issues facing the University which are symptomatic of the major issues facing all universities now and from time to time, seemingly without limitation. These events prompt me to reflect on the office of Chancellor - what are its functions viewed derivatively from (1) the history of the office; (2) the Council of the University; (3) the idea of the university and (4) the relationship of the University to government and the wider community?

I am only the second Chancellor of this University. The University is one of 36 such institutions now in Australia. It is one of the Universities formed in recent times: indeed of all the universities founded since the 12th century, two-thirds were established between 1950 and 1985.² Since 1983 the number of university places in Australia has increased by 80 per cent. Such expansion is consistent with the great growth in population and rise in living standards but it demonstrates the degree of change now a feature of higher education.

Formed in 1991, Edith Cowan University's component parts have a long history tracing back to 1902. A multi-campus university constituted by Churchlands, Mt Lawley, Claremont, Joondalup and Bunbury, together with study centres at Broome, Albany and overseas, ECU was responsible last year for the education of approximately 19,000 students by a staff of 1,900. The students comprise 10,000 full-time; 6,000 part-time; 3,000 external students and 2,800 post-graduates enrolled in Faculties of Arts, Business, Education, Health and Human Sciences, Science, Technology and Engineering; as well as the Academy of Performing Arts. Set firmly on the road of university status, the University is now demonstrating rising contributions to research and publication as well as its firm commitment to teaching, so reflecting its new mission.

This immense development has been the product of the work of many people. It has been presided over for five years as Chancellor and four years previously as Chair by my predecessor Justice French. His outstanding foundation contribution will indeed be a hard act to follow. He tells me he played no part in the search for his successor. He must, however, have been at least mildly surprised when the Council's search committee came up with the person in the chambers next door. For me that has the great advantage that his experience of ECU affairs is not far away.

If you are wondering what a Chancellor is, resort to the dictionary will not assist you. The word "Chancellor" variously describes a secretary of the king or foreign ruler; a high-ranking state or law official; a foreman of a Scottish jury; a bishop's law officer; an officer of an order of knighthood who seals commissions; the chief minister of a European state as well as the relevant sense of the titular head of a university.³

Turning from the dictionary to the statute constituting this University does not provide much additional assistance to understanding the functions of the office of Chancellor. It simply requires the Council to elect a Chancellor and requires the Chancellor to preside at all meetings of the Council.⁴

The office of Chancellor is a well known office recognised in the enactments and operation of all Australian universities, being a feature recognizably inherited from British experience. Like many features of the modern university, the concept of the

office goes back to medieval times. There is an early mention of the office of Chancellor in the Legatine Award of 1214 although the office may have been in use earlier.⁵ Until the 15th century it was customary for the Chancellor to be a resident officer of the university and to serve for only two or three years. In the University of Oxford the Chancellor was originally an official from outside the University, being an official appointed by the Bishops. As his dependence on the Bishops declined or disappeared, he became the representative of university pretensions, even of university usurpations, and the judicial powers which he derived from the Bishop he successfully passed on to the University itself.⁶ Oxford itself grew as a consequence of the recall in 1169 by Henry II of English students in Paris that place, along with Bologna and Salerno, being the places where scholars then congregated.⁷

In the University of Cambridge, of which I will be fortunate shortly to have some experience, students gathered in fugitive numbers from around 1209, largely as the result of an Oxford student at archery practice accidentally killing an Oxford townswoman thereby provoking the summary hanging of several scholars.⁸ Within twenty years or so there was some organisation of Masters (the teachers) with an elected Chancellor at their head.⁹ One text stated that:

"On the whole Cambridge University has been well served by its Chancellors."¹⁰

Then the text ominously adds:

"The prominence of the Chancellor's position has not, in the past, made for security; seven have ended their period of office on the executioner's block."¹¹

The present day election of the Chancellor of Cambridge for life reflects the practice which later developed in English universities. It is said the practice also involves the election of persons of noble birth and of distinction in the service of the state, from which I will leave it to you to conclude how far modern Australian practice has slipped from these high standards. Any Australian move towards lifetime appointment would undoubtedly be met by the appointment of only persons of feebleness, ill health and advanced age!

The paucity of the statutory description of the office of Chancellor in ECU and its duties is typical of Australian universities.¹² One Australian Chancellor has essayed therefore his own description of the duties of Chancellor as follows:¹³

- (1) to Chair the main decision-making bodies within the university, central to which is the Council and to ensure they work fairly and well;
- (2) to preside on important ceremonial occasions such as graduation ceremonies and public meetings or seminars;
- (3) to work cooperatively with the Vice-Chancellor and to speak freely and frankly with him or her on all issues concerning the well-being of the university.
- (4) to be thoroughly acquainted with the university, its spirit and thereby to provide direction in relation to both morale and standards.

Of course it is the office of Vice-Chancellor (overseas sometimes called Rector or President) which is central to the well-being of any university. No appointment to a university is more important than that of the Vice-Chancellor. Any role the Chancellor has is tailored to the need for supplementation of the work of the Vice-Chancellor and those behind him or her or to represent the university as a whole and so to embody the spirit and purpose of all who serve in it whether as scholars, staff, students or administrators.

Council

The *Edith Cowan University Act* provides the University shall consist of the Council, the members of the staff and the enrolled students.¹⁴ Importantly, the governing authority of the University is the Council.¹⁵ The functions of the Council, equally importantly, are to promote the objects and interests of the University.¹⁶ The Council is therefore not a titular body but one with the vital responsibility to govern.

What are or ought to be the functions of the governing body? An American formulation lists the following as the major responsibility of a governing body:

- (a) to maintain the integrity of the university;
- (b) to appoint the Vice-Chancellor;
- (c) to make certain the university is well managed;
- (d) to approve the budget;
- (e) to raise money;
- (f) to manage the endowment of the university;
- (g) to assure adequate physical facilities;
- (h) to oversee the educational program;
- (i) to approve long range plans;
- (j) to serve as bridge and buffer between campus and community;
- (k) to preserve institutional autonomy;
- (l) to serve as a court of appeal; and
- (m) to be informed.¹⁷

All of these will strike a cord with those of you who have been involved on one level or another with issues of university governance.

For my part the last listed function is the most important. A governing body cannot serve a university well unless it is informed. If informed, it will act to create and safeguard the conditions essential to a true university. To be informed, it must have the opportunity for consideration and meaningful discussion of all current issue of major policy affecting the University.

This is particularly so in times of significant changes effecting universities. The last decade has been such a time. Policies emanating from governments of different political persuasion have made and re-made the tertiary education structure of Australia. It is fair to say that the only constancy in higher education in recent times has been change. In that context it is comforting to note that the Commonwealth Minister for Education in commenting on the terms of reference of the West Committee stated it would focus on developing "a long term policy framework" for higher education.

It is vital that reports on higher education of the sort we have seen at federal and state levels since the Murray Report of 1957 be digested and considered by the governing councils of each university so that by debate they will have an understanding of the policy issues at stake. How else can they properly discharge their role? Out of an informed governing council comes the ability to appreciate strategies and to engage in long range planning. Those are the vital aspects of leadership through the Council.

More so is this important because recent changes represent a relocation of power in the governance of universities. While the ultimate authority rests with the governing council, the reality is that the high level of federal funding and the involvement of successive federal governments in major policy shifts, combined with a centralised industrial provision with respect to universities, deprives governing councils of the real opportunity of determining the development of their institution. The levelling influence of government funding, government policy, unanticipated change and technology have dictated the directions in which choice lies.

However, policies currently in place provide greater opportunity for governing councils to develop the mission and style of their own university than has hitherto been the case.

As the Vice-Chancellor of this University has written, "in future universities must do more themselves to solve their own problems, set their own missions, and provide for an effective delivery to their defined market segments, of their varied teaching and research responsibilities".¹⁸ It is therefore more essential than ever that governing councils are fully informed on the policy environment in which they must determine the general direction in which they should lead the institution for which they are responsible.

This was the view of the Hetherington Committee.¹⁹

These objectives were also accepted and recognized by Higher Education Management Review (the Hoare Report) released in December 1995. The Review advocated that:

"The governing body of higher education institutions should have ultimate responsibility for strategic direction and development of the university and external and internal accountability, including monitoring and review of institutional strategic performance."²⁰

I am pleased to announce that, consistently with these objectives, the Council of ECU at its meeting on 13 February established a Long Range Strategy Committee to supplement the work of its existing academic policy and planning committees.

The work of Council is enriched where the Council also provides adequate opportunity for expression of views by those most knowledgeable of the community of the University - namely, its students, its graduates and its staff, academic and non-academic. Balance is brought by the wider input from community members.

It was President Kennedy who said "the student leaders of today are the student leaders of tomorrow". Despite that, as a former student leader I value student input to all levels of decision making. An articulate student body is an important part of the educational environment which the University can provide and a potential source of contribution to university governance.

As a former active member of a graduate body I look forward to graduate input into the University. Those who have experienced and gained from the university education and value it highly enough to return to serve it, have much to give.

Therefore, as I perceive it, the role of the Chancellor is above all to ensure that the Council of the University functions as a university council should and is an inquiring and informed body. As another Chancellor has expressed it, "because of its central role, the spirit, efficiency and standards of Council tend to permeate the university".²¹

Idea of a University

To return to Pierre Ryckmans. At the core of Ryckmans' view, which he developed in the lectures, was reliance on an observation by Malcolm Muggeridge that the main reason why many people previously looked at universities with a certain feeling of awe and respect was that so few of them had actual access to it.²² However, says Ryckmans, as everybody goes to a university there will be another view of it. I do not accept that the core of the foundation of the idea of a university is access to knowledge unshared by others. Even if the total knowledge available to any university was equally available on the internet or any other technological means to all citizens of the world, the university would have a vital and continuing role in analysing and passing scholarly judgments upon the available information. The essential element of a university is not the provision of access to information but the application to information of trained and objective intellectual discipline and the training of others to think likewise. That alone may only be truly achieved through a university.

Borderless internationalisation of higher education and knowledge does not therefore carry with it the corollary of the death of the university, although it may compel the university in its present form to closely consider the manner in which it fulfils its essential function. Edith Cowan as "the University for the information age" with outstanding initiatives in the innovative use of communication, multimedia and information technology in education and training is well down the right path to plan its future in that environment.

The university's function is therefore essentially not just to collect, store and impart knowledge but to do so in a way which cultivates the intellect of the student and the researcher.²³ It is important a university is a source of training but it is essential it is a source of ideas; ideas expressed because they are perceived and not because they are palatable. It is the cultivation of the intellect in a way which sharpens critical facilities, arouses an interest in further knowledge and creates the personal internal momentum for further intellectual activity that is truly the function of the University. As Sir Paul Hasluck once expressed it:

"...the community and every profession needs people who can think and who seek the truth and accept no other standard except the truth."²⁴

At the same time there can be no comfortable assumption that universities will ever be the sole source of ideas.

Universities and government

It follows from what I have said about the role of a university council and the idea of a university that I accept the idea that the role of a university in a democratic society must be to cultivate the quality of thinking and inquiry which acts as the life blood of democracy. Universities will never totally serve the cause of any government for if they did so they would cease to be universities. They will, however, serve the cause of the state by equipping minds and so guaranteeing the maintenance of independent individual thinking and therefore the democratic system of government itself.

Edith Cowan

As Chancellor I must have in mind that Edith Cowan was a person unafraid of change, informed on policy and prepared neverendingly to fight to implement ideas to diminish the gulf between the framing of policy and its implementation in practice. Being installed within sight of her re-erected house which lies behind me on the lake reminds us all of her example.

Becoming Chancellor of Edith Cowan has two strong personal overtones for me. I commenced my education at the primary level in the East Claremont Practising School adjacent to the Claremont Teachers' Training College. I therefore enjoyed from an early age the very special relationship that existed between that school and the College, now the Claremont Campus of this University.

Secondly, it was my grandfather who played some significant part in supporting the Cowans in their public activities.

When Edith Cowan embarked on her first campaign for Parliament, a venture in which she was not anticipated to be successful, John Nicholson chaired the opening of her campaign in St Mary's Hall, Colin Street.²⁵

When Edith Cowan died my grandfather was on the platform and spoke at the public meeting held in the McNess Hall on 23 September 1932 to consider the erection of a memorial in her honour.

This morning on the way to work I drove around the Edith Cowan Memorial Clock at the top of Kings Park Road. Among today's buildings it seems decidedly unpretentious. The story behind it, however, is momentous. So momentous in fact that I can do no more than say to you that as Chancellor of this University I will endeavour as hard as Edith Cowan did throughout her life, to engage in the work of its Council and Committees with all energy at my disposal. To do less would be to dishonour her and the memory of her symbolised by the vitality of Edith Cowan University. Lynne and I look forward with enthusiasm to the involvement which this will bring in all the aspects of the life of this University.

Your Excellency and Mrs Jeffery and all present today - thank you for honouring Edith Cowan University by your attendance. I look forward to contact with you in the name of this University in the course of its work for the wider Western Australian, Australian and international communities which it serves.

Endnotes:

- 1 Pierre Ryckmans, the 1996 Boyer Lectures, *The View from the Bridge: Aspects of Culture*, ABC Books 1996, p12.
- 2 Papers of the Conference on The Transition from Elite to Mass Higher Education", Sydney 1993.
- 3 *Shorter Oxford English Dictionary* (1993), p370
- 4 *Edith Cowan University Act* 1984, ss12(1)(a) and (3)
- 5 C E Mallett, *A History of the University of Oxford*, Voll: *The Medieval University*, Methuen London 1924, cited in B R Clark & G R Neave, *Encyclopedia of Higher Education* Vol2 (Pergamon Press, 1992), p1404. The Award was a material part of the law of the Church in England resulting from enactment in national synods held by papal legates to England: cf David M Walker, *The Oxford Companion to Law* (Clarendon Press, Oxford 1980), p755.
- 6 Mallett, *op cit*, p28.
- 7 D Ferguson & others, *Cambridge* (Covent Garden Press, Cambridge, 1987), p10
- 8 *Ibid*, p11
- 9 *Ibid*
- 10 *Ibid*, p13
- 11 *Ibid*
- 12 Geoffrey Lockwood, "Universities as Organisations", in G Lockwood and John Davies (eds), *Universities: The Management Challenge*, SRHE and NFER - Nelson, Windsor and Philadelphia, 1985, p34.
- 13 R E McGarvie, "*The Chancellor in the Modern Australian University*" (1992) 1 (4) *RMIT Openline*, page unnumbered
- 14 *Edith Cowan University Act* 1984 (WA), s5(1)
- 15 *Ibid*, s8
- 16 *Ibid*, s16(1)
- 17 John W Nason, *The Nature of Trusteeship: The Role and Responsibilities of Colleges and University Boards*, The Association of Governing Boards of Universities and Colleges, 1982, p19-46. See also *Renewing the Academic Presidency*, The Association of Governing Boards of Universities and Colleges, 1996
- 18 R Lourens, "University Management: Tensions in a Changing Environment", (1990) 12(1), *Journal of Tertiary Educational Administration*, p217.
- 19 Tertiary Institutions Governance Committee, "*Senates and Councils at Tertiary Institutions in Western*

Australia: Review of Structures and Functions" (the Hetherington Report) July 1985, pl 5, par3.14

- 20 Higher Education Management Review (Hoare Review), December 1995, p10
- 21 R E McGarvie, (supra)
- 22 Ryckmans, (supra), p13
- 23 cf P J Boyce, Vice-Chancellor's Address, Murdoch University Graduation Ceremony, 26 March 1986, p2.
- 24 Paul Hasluck, *An Open Go* (The Hawthorn Press, 1971), p45
- 25 P Cowan, *ibid*, pl61.

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